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REPORTS

NOTES OF THE WEEK

Silence and Cruelty

Persistent nagging which injures or endangers health may constitute matrimonial cruelty: *Atkins* v. *Atkins* [1942] 2 All E.R. 637. So, by contrast, may persistent sullenness: *Lauder* v. *Lauder* [1942] 1 All E.R. 76. In *Threadgold* v. *Threadgold* (*The Times*, May 1), the wife petitioned for divorce on the ground of cruelty. The marriage had broken down because of friction about the children of the parties, both of whom had been married before. In quarrels, said Karminski, J., the wife went into the attack and the husband kept silent. The wife complained that her husband maintained silence for long periods of time, but in order to constitute cruelty there must be an offensive use of silence and not a defensive use. The husband in this case had used silence defensively as a shield. The learned Judge said that he could not say that in law this amounted to cruelty. Accordingly he dismissed the petition.

Crime and Wages

In our article with this heading at p. 268, *ante*, we referred to the obstacles which the Truck Acts placed in the way of payment of wages otherwise than in cash, to the dangers of this practice and to the successful steps taken recently in West Germany, resulting in payment by bank credit.

We said "The time has come for a step forward—trade unions in the past have opposed a change for reasons which were sound enough on the surface but views might be altered by round table discussions."

An important step forward has now, in fact been taken. The Minister of Labour has recently submitted proposals to the National Joint Advisory Council for a review of the Truck Acts and for payment of wages otherwise than in cash.

He suggested that an independent committee should be set up to review the Truck Acts and make recommendations for bringing the provisions of the Acts more into line with present day circumstances and requirements. Although the Acts contain valuable safeguards for workers they were passed at a time when bonus and co-partnership schemes were novel conceptions and when the present developments in transport, housing and canteens had not been contemplated.

The Minister also suggested that without necessarily waiting for the report of this committee separate legislation might be enacted enabling a worker to be paid with his consent either by cheque or by credit to his banking account. It was further suggested that when the worker was away ill payment by means of a postal order or money order should be allowed.

The council, which is composed of representatives of the British Employers' Confederation, the nationalized industries and the Trades Union Congress, agreed to all the proposals subject to the proviso that any resulting legislation should include "a positive statement of the worker's right to continue to be paid in cash if he so desired."

It is unlikely that legislation can be introduced for some time because other bodies and organizations will need to be consulted. Mr. McLeod will have to find out what the shopkeepers (who would in many cases be asked to cash the cheques) and the bankers think about it.

And even if legislation is duly enacted it will be necessary to preach the gospel to the workers, among whom at present there is no great number who wish to be paid other than in cash weekly. We gave details in our article of the approach made to the West German workers and the resulting success attained: we are confident that the right approach to British workers would produce a response and a result no less favourable.

Car or Child?

Hire purchase is all the fashion today, and no doubt it has proved profitable to traders and helpful to customers. Many a young couple wishing to marry would be quite unable to make a home if they had to pay cash down for everything, and so long as they do not enter into commitments which they may not be able to fulfil they are acting quite wisely in making use of credit. Unfortunately many people have felt themselves encouraged to enter into hire purchase agreements without sufficient consideration, with the result that they find themselves in no position to meet current

liabilities. In the *South Wales Weekly Argus* there appears the report of a case in which a man, summoned for £17 arrears under a contribution order made in respect of his child, stated that one reason why he was in arrears was that he had bought a Jaguar car on which he had paid £70. When asked by the complainant which he considered more important, paying for his child or the car, he said: "I don't know really," adding that he did not know whether to be taken to court by the finance company or by the council. The order was that payment should be paid at the rate of £2 10*s.* a week to be deducted from his wages by his employers.

It does not seem to have occurred to this man that before deciding to have a car he should consider both his income and his liabilities. It is a curious attitude of mind which pays so little regard to family obligations, but perhaps not so uncommon as it used to be.

Not the Offence Charged

It is well established that a magistrates' court is not entitled to convict a defendant of an offence other than that charged in the information. This was again made clear in *Pender and Others* v. *Smith* (*The Times*, May 1). The appellants had been convicted of taking liquor from licensed premises outside the permitted hours and on appeal to quarter sessions the convictions had been upheld. From the latter decision the appeal came before the Divisional Court.

In the course of delivering judgment the Lord Chief Justice said that no offence was committed until the intoxicating liquor was taken from and got outside the licensed premises. In this case the police had struck too soon and no offence had been committed. The recorder had said that if he was wrong about the substantive offence, there had been an attempt to commit the offence, but the appellants had been charged before the magistrate with the substantive offence and not with any attempt; there being no jurisdiction in the magistrate to convict in the alternative of an attempt, the matter could not arise. The appeals were accordingly allowed.

Appeal Against the Refusal to Grant a Driving Licence

The Road Traffic Act, 1930, s. 5 contains provisions about the physical fitness of applicants for driving licences. The form on which application is made for a licence requires the applicant to state whether he is suffering from any one of certain diseases or physical disabilities which are specified on the form or from any other disease or physical disability which would be likely to cause the driving by him of a motor vehicle to be a source of danger to the public. Section 5 (2) enacts that if the licensing authority are satisfied that an applicant is suffering from any such disease or disability as aforesaid they shall refuse to grant him a licence, and s. 5 (5) provides that a person aggrieved by such a refusal (or by a revocation under other provisions of the section) may appeal to his local magistrates' court against the refusal (or revocation). On any such appeal the court may make such order as it thinks fit and their order is binding on the licensing authority

Such appeals are not frequent, but one is reported in the *Sussex Express and County Herald* of April 10. The licensing authority's reason, in this case, for refusing to grant a licence was that they were satisfied, on medical reports, that the applicant, who had been detained at one time in a mental institution, was still a mental defective and was unsuitable because of his sub-normal intelligence to drive a vehicle on public roads. Had the position been that as a result of mental defect the applicant was "subject to be placed under statutory supervision" he would not have been entitled to appeal [*see* Motor Vehicles (Driving Licences) Regulations, 1950, reg. 5, s. 5 (2), *supra*, and *R.* v. *Cumberland JJ.* (1931) 95 J.P. 206]. The applicant said that the order under which he had been detained was discharged in October, 1958, and a doctor who had known him as a patient for a year said he could find nothing to indicate that the applicant was not a responsible individual. The licensing authority called two doctors who gave evidence supporting the view on which the authority's refusal was based. The appeal failed.

Qualified "Learner-instructors"

It was held in *Rubie* v. *Faulkner* (1940) 104 J.P. 161; [1940] 1 All E.R. 285, that where the circumstances require that the supervisor of a learner driver should do something to control the driving of the learner and he does nothing, he may be guilty of aiding and abetting the commission of a driving offence by the learner. The fact that there is this onus on the instructor suggests that he should have certain necessary qualifications to ensure that his presence in the vehicle with the learner does give to other road users the protection which is intended to be provided and it is understandable, therefore, that some people take the view that persons who undertake the responsibility of acting as supervisors to learner drivers should first prove that they are competent to do so.

Our attention has been called to this matter by a report in the *Manchester Guardian* of April 22, about a discussion on the question at the annual conference of the National Chamber of Trade at Hastings recently. A motion was put forward by the Motor Schools Association of Great Britain that there should be legislation to require would-be instructors to prove their competence. It urged also that cars used for tuition on the highway should be required to be fitted with dual control equipment. We have no report of the arguments, pro and con, but the report in the *Manchester Guardian* concludes by stating that the motion was rejected after delegates had urged that such legislation would create a monopoly for motor schools. This point of view is easy to appreciate but it does not necessarily provide a wholly satisfactory answer to the question whether it is right to let just anyone who happens to hold a licence act as a supervisor and instructor of a learner driver.

Litter

At a conference called by the Devon county council, reported in *The Times* of April 29, a useful lead was given on the subject of anti-litter measures. It is proposed to appoint anti-litter officers in plain clothes, who will carry letters of authority from the county council, authorizing them to take names and addresses of people throwing litter and initiate prosecutions or give warnings.

The chief constable of Devon agreed that there was a good deal to be said for the suggestion of special authorized officers; people rarely threw litter in front of uniformed police.

Apart from the improvement of the general standard of behaviour in this matter, which can be furthered by propaganda and education in habits of tidiness, we have no doubt that the best remedy is successful prosecutions widely publicized. As was said by Sir Henry Slesser, chairman of the conference: "The kernel of this litter problem is successful prosecutions . . . I think if we get 20 successful prosecutions they will do more to prevent people throwing litter about than anything else."

Unsightly Curtilages

The decision in *Stephens* v. *Cuckfield R.D.C.* [1959] 1 All E.R. 635 upsets an opinion which has been generally held about s. 33 of the Town and Country

Planning Act, 1947. Section 58 of the Public Health Act, 1936, enables a local authority to procure the demolition or repair of a building which is dangerous or unsightly because of dilapidation. A disused building often has a garden or other appurtenant land which becomes untidy or an eyesore, but cannot be dealt with under s. 57, even if the detrimental appearance of the land is a consequence of dilapidation of the building. In such cases it has not been unusual to fall back on s. 33 of the Act of 1947, for requiring the owner of the property to clear it or tidy it. The section refers to any garden, vacant site, or other open land and on the face of it seems to apply, whether or not this land is within the curtilage of a building. The Lord Chief Justice has now, however, held that if the land is within the curtilage of a building the section cannot be used. He appears to have reached this conclusion with some regret, but to have been driven to it by close consideration of the section in its context. We respectfully admit that we have our doubts about the decision, and it may be that means will be found to question it. If it stands, the section will still be available for many of the other cases falling within its language, but it may be that there is room for a minor amendment of s. 58 of the Public Health Act, 1936, to close the gap. The local authority's attempt to use the section in the *Cuckfield* case arose from rather special circumstances. The most general use of such a power is where the curtilage of a building has become unsightly by neglect.

That Ministry Again

We have referred in the past to that hallucination gripping Ministry of Agriculture, Fisheries and Food officials which causes them to believe that they are earning their salaries and usefully employing their time in devising detailed instructions to land drainage authorities about the minutiae of administration and book-keeping in relation to the land drainage grants disbursed by the Ministry.

It is true that against the general background of local government finance and in comparison with grants for which other Ministries are responsible these payments are equivalent in importance to the merest petty cash: in the past, however, that fact did not prevent the issue of the most detailed and totally unnecessary instructions and conditions of grant.

Gradually the Ministry have seen the light, although whether because of comments and representations here and elsewhere we do not know. The latest instance of a more reasonable attitude is the issue in April last of the Land Drainage (Grants to River Boards) (Amendment) Regulations altering in some respects the principal regulations of 1950, and a similar issue amending the Catchment Board Grant Regulations. For example, after nine years it has now been acknowledged that a river board or catchment board might be allowed to decide who should sign an application for grant and that a catastrophe would not necessarily rock board or Ministry if the 1950 requirement that the application must be signed by the chairman and clerk of the board—and none other—were cancelled.

The amendment regulations contain a new requirement that accounts must be certified by the district auditor but the original regulation enabling an officer of the Ministry to examine any books, accounts and vouchers of the boards is retained. We hope that the Ministry will be satisfied with the district auditor's certificate and will not indulge in useless double-checking. In the past a misguided sense of proportion led them to require all individual vouchers to be sent to London for examination. This curious procedure, unknown to any other grant-paying department, has rightly been abandoned and there should be no attempt to sustain any similar system.

Ingrained habits die hard, however, and on the same day that the grant amendment regulations were issued a circular was sent forth laying down in five paragraphs the accounting procedure to be followed where an unexpected balance of grant is transferred from one scheme to another. If these book-keeping instructions are followed in detail three results will ensue:

(*a*) First, the board's book-keeping will be the same as the Ministry's. Whether this will be an advantage we leave those of our readers who know something of Whitehall accounting methods to judge.

(*b*) Secondly in the words of the circular the fact that the transferred amounts are clearly accounted for "will be self evident to district auditors when inspecting the authorities' accounts." Even without the circular's aid we venture to think that clarity would be achieved, but we cannot subscribe to the view that a matter has to be self evident before a district auditor can check it. Those who know them know better.

(*c*) Thirdly, teaching in the art of sucking eggs will have been given.

National Corporation for the Care of Old People

The National Corporation for the Care of Old People was set up to promote the welfare of the aged and its objects give it freedom of action over a wide range. So far, it has spent the major part of its funds in helping voluntary organizations to provide accommodation in the form of housing, homes, and clubs, as well as a wide variety of home care services designed to help old people to remain in their own homes. The 11th annual report of the corporation shows that during the last year there has been a considerable change of emphasis in its work by encouraging and initiating research into problems affecting the aged. This includes a national inquiry on the mobile meals service by the Government Social Survey through a grant made by the corporation; an inquiry by the department of social administration at Manchester university into the comparative costs of domiciliary and institutional care of old people; and a study by the department of architecture of Durham university on housing design and cost.

The corporation has, at intervals of two years, recorded the number of places provided in small homes by local authorities and voluntary organizations. This shows that out of the 145 local authority administrative areas in England and Wales there were still 90 in March, 1958 which had provided under one bed in small homes per 1,000 of the total population. The actual demand is extremely hard to assess and much will depend on the quality and quantity of other services in the area. It is stated, however, that some local authorities suggest that they will need from two to four beds per 1,000 in the future.

In the conclusion to the report it is stressed that the present demand for services for old people is such that already they cannot meet the whole need, whilst the prospective increase in numbers makes it imperative that those which are provided should become far more widespread. The report then goes on to urge the need for more co-operation and co-ordination in all spheres. This is a subject on which much has been said already and there is no doubt that improvements in these respects are still needed in some areas. But whether there is such a lack of co-operation, as is suggested, between the various government departments concerned, is impossible to judge without precise information as to existing practices. We should have thought that, as a matter of routine, ministers and their departments would keep in touch on all matters affecting the elderly. The governors suggest, however, that there is need for closer working together whether by a co-ordinating committee, a Minister for Social Welfare or by any other means. The setting up of yet another ministry might lead to even

more overlapping. But a more serious objection is that the elderly might then be considered to be a class apart whereas the object must be to ensure that they have a proper share of the services—health, welfare and housing—provided for the community in general. The influence of public opinion and parliamentary debate is, however, such that their needs are not likely to be overlooked in so far as financial and other resources are available.

THE ABSENTEE PROBATIONER

[CONTRIBUTED]

The *Justice of the Peace* recently commented (122 J.P.N. 834) "on an important principle" laid down by the Court of Criminal Appeal in *R.* v. *Evans*.

This referred to the practice of some courts of sending an offender to a detention centre on one offence and making a probation order on another.

In such cases, where the probation order is made to provide supervision when the offender leaves the detention centre the two decisions may seem inconsistent and contrary to the Act. But in practice the inconsistency vanishes as many probation officers would no doubt bear witness. This underlines the need for after-care for those sent to detention centres. It is time that the question was considered and a solution might be to make a statutory period of after-care for six months.

One inference to be drawn from Lord Parker's judgment is that, as a general rule, a probation order should not be made which cannot take effect at once, although an exception might be made in the case of a man nearing the end of his National Service. There are however various situations in which a probation order is the most satisfactory decision based on the facts of a case although immediate operation of the probation order may be precluded.

Examples which cannot be called "hard cases" and will be familiar to magistrates are plentiful.

There is the young offender who wants to join the Army as a regular, or who may register for National Service. He will go away from home for at least two years—may go abroad for a large part of the time; or he may be rejected. If he is accepted as a soldier, the probation order still is of value. He may not be kept in the Army long—he may be discharged after a few days, weeks or months. He may find problems that discussion with a probation officer might ease. He will have plenty of leave and contact is not difficult. Or—as is sometimes the case—he can be supervized by the probation officer for the division in which his unit is stationed.

Two young men recently appeared at an Assize court. Serving in a unit where they found problems they could not cope with, they went absent and committed offences. They were placed on probation for three years; and it is evident that the support they get outside their camp as well as the earlier intercession by the probation officer with their commanding officer has made a considerable difference to them.

Sometimes there are problems in the home that the probation officer can do something about with desirable effects, seen when the young man returns to his home, even though *personal* contact is only possible during leaves.

So much for the probationer serving in the Army. Much the same arguments apply to those serving in the Merchant Navy who may be away on long voyages. Those who have jobs which take them away for quite long spells present the same problems. A worker in the film industry may be away on location for weeks or months—often for a time equal to that of the average stay in a detention centre. It would seem unjust and might be harmful if simply because of this a probation order is not made in cases where it seemed otherwise appropriate.

In some areas, when a young man is called up for his National Service or joins one of the Services, his probation order is discharged. This practice is a doubtful one for the reasons already given. If it is based on the impossibility of the probation officer supervising the probationer, it applies to a much wider group than those joining the Services. In fact the probation rules lend themselves to a flexible interpretation of contact between probation officer and probationer. The emphasis is on frequent contact especially during the early part of the probation order; but the working out of this is left to the officer. If for some good reason during *part* of an order, frequent contact is not possible it would not seem to bar an order being made; nor would it necessarily make the order barren. The influence a probation officer can exert on a probation case is possible through a consistent relationship established by effective supervision. In cases where this is quite impossible, the order can be discharged in due time. But each case should be judged individually, there should, it is submitted be no general rule.

T.C.

REGISTER ENTRIES

By F. G. HAILS

At 120 J.P.N. 705, we contributed an article under the above heading, which was supplemented by another, "Keeping the Register," at 121 J.P.N. 173. It will be recalled that the Magistrates' Courts Rules, 1952, lay down that it is the duty of the clerk to keep the register, and that the form is laid down in form 117 of the Magistrates' Courts (Forms) Rules, 1952. In our earlier articles we cited but one case on the contents of register entries, namely *R.* v. *Recorder of Leicester, ex parte Gabbitas* (1946) 110 J.P. 228; [1946] 1 All E.R. 615. Now there are two others, one a direct decision, and the other yet another illustration of the desirability of applying the *ratio decidendi* of *R.* v. *Gabbitas, supra*, wherever "special reasons" form part of the decision of the court.

To take the latter first, the case is *R.* v. *Liverpool JJ., ex parte W.* (1959) 123 J.P. 152; [1959] 1 All E.R. 337, and was a case dealing with adoption. The application before the justices was by a man to adopt the illegitimate child of a woman to whom he had been married some years after the birth of the child, and who had since

died. The matter came before the Divisional Court on application for *certiorari* by the maternal grandmother, and it was held that the guardian *ad litem* had made a defective report, and that the justices had not satisfied the court that they had found special circumstances which justified the making, as an exceptional measure, of an order for the adoption of a female by a sole male applicant, as required by the Adoption Act, 1950, s. 2 (2).

It might be that the justices did find such reasons, and possibly they were recorded in any note of the proceedings, and possibly in the register, but this was not disclosed as they did not feel it necessary to file any evidence. At the the same time we cannot help mentioning here that if such reasons had been entered in the register and recited in the order it would have been clearly apparent that the justices had not failed in their duty.

The next case is reported at (1959) 123 J.P. 166 under the title *R.* v. *Huntingdon JJ., ex parte Simpkin & Coombes*. The facts were simple: Simpkin and Coombes applied for an order of *certiorari* on the ground that, they having been committed for sentence under the Criminal Justice Act, 1948, s. 29, the certified copy of the register entry, forwarded in accordance with the Magistrates' Courts Rules, 1952, r. 20, was defective in that it cited the wrong statute, and that the date was indicated by the word " ditto." It was held that the entry must be quashed, that the copy sent to quarter sessions was a nullity, and that it was the duty of the clerk to strike out the original entry, make a new one, and send a copy of that to quarter sessions.

In this case the disputed entry read: " received from some person unknown a Bedford lorry spare wheel complete with tyre (size then specified) knowing the same to have been stolen." The judgment specifically excluded any decision as to the sufficiency of this part of the entry, which we would have thought to have been adequate, neither did it say that it was necessary to put in the statute and section, merely that these last had been entered incorrectly, and that the word " ditto " did not amount to an entry of the date. It would seem, therefore, that each entry must be completed in itself, and that every column should be fully completed, a somewhat tedious business where one informant has laid a large number of informations against the same defendant. We also think that it would be wise to avoid abbreviations, but still do not think it necessary to set out in full the nature of the offence, provided that r. 54 (3) is complied with by showing " clearly . . . what is the offence."

As to the quotation of the statute, again we think that this is unnecessary, but if anybody wants to set out this authority we think that it may often, if not invariably, be more expeditious to use the regnal year reference, *e.g.*, 20 and 21 Geo. 5, c. 43, instead of Road Traffic Act, 1930, s. 11. Indeed, in this instance, there is not much saving, but there is when we consider Motor Vehicles (Construction and Use) Regulations, 1955, as against S.I. 1955, No. 482. But save as we have just mentioned we do not favour the use of abbreviations: after all, m/v may mean " motor vessel " or " motor vehicle," p.c. either " pedal cycle," " police constable " or even " post card."

Now that the matter has been taken once to the Divisional Court other applications may well follow, and the wise clerk will see that the short cuts so beloved of his hard-pressed staff are avoided in the case of the register. As Donovan, J., said in his brief judgment, the court register was abbreviated in order to save an insignificant amount of time. At the same time, we would point out that if there are 10,000 entries a year, and many courts can boast as many, the saving of time over that period is not so insignificant.

LOCAL AUTHORITIES AS PURCHASERS

The gradual and impressive building-up of powers granted to local authorities to acquire land in pursuance of their statutory purposes has seen several distinct phases. Originally, such powers were conferred apparently without distinction as to the type of local authority, subject to the obvious restriction that a power was not granted where it fell outside the range of functions which could be suitably or properly exercised by a particular class of authority.

But within the last two decades or so, Parliament has removed certain functions from the sphere of local government to central agencies and special corporations, and has transferred other functions from county district councils (that is to say, the non-county borough and urban and rural district councils) to county councils. In the first instance, in a process of centralization (among other factors) main roads became trunk roads, municipal aerodromes were placed under the control of the Minister of Civil Aviation (but this process is now in reverse), public assistance was transferred to the national assistance board, hospitals to executive committees, the development of new towns to development corporations (this, however, is a new power and not a transferred function), electricity and gas services to area boards, and road passenger transport and water supply were put under notice.

Secondly, under a redistribution of powers from the smaller to the larger local government units, education, local health services, town planning, and fire services were transferred from county districts to county councils, and police responsibilities removed from such non-county boroughs as possessed them and handed over to the county councils.

Today, the wheel is turning again, and we are faced with a third phase, the emphasis being on the grouping of large water undertakings, changes in the system of allocating government grants and the establishment of local government commissions (for the second time—the first commission died prematurely) to consider the future structure and powers of local government.

The current powers of local authorities to acquire land for their statutory purposes must be considered in the light of the following rules of limitation:

1. As a general rule, the exercise of any power is restricted to certain classes of local authorities.

2. A power may be limited to purchase by agreement and lack the strength to acquire compulsorily.

3. The prior approval of a Minister may be required before land can be bought by agreement.

4. Restrictions may be placed on acquiring land outside the area of the acquiring authority.

5. Conditions may be imposed on the provision or siting of certain undertakings.

6. Limitations are placed upon the compulsory acquisition of special categories of land.

Division of powers between local authorities

Powers to acquire land are distributed between local authorities in relation to the appropriate function, that is to say (in a very general way) functions which require to be exercised and co-ordinated over an adequate area are reserved to county councils and county borough councils. These include provisions relating

to cottage holdings, remand homes and approved schools, and in recent years education, local health services, police, fire services, town planning, small holdings, and certain functions concerned with national assistance and children's welfare. In some cases, such as education, planning, and health services, a certain measure of authority has been delegated to district councils through the medium of divisional executives and county area sub-committees.

Functions managed by townships and communities are open spaces, highway improvements (but not as regards major highways, which are the preserve of the Minister of Transport or county and county borough councils), cemeteries, public libraries, museums and art galleries, commons, crematoria, allotments, car parks, slum clearance and housing accommodation, public health, markets, slaughter houses, civic restaurants, and coast protection. These powers are performed by county borough and county district councils, and county councils share a few of them.

Certain functions are carried out by county councils and borough councils (not necessarily county boroughs) and include the provision of assize courts, sessions houses, judges' lodgings, explosives magazines, land held on behalf of volunteer corps for military purposes, ancient monuments, and diseases of animals. County boroughs, on the other hand, are omnibus authorities and exercise generally the powers of both county councils and municipal boroughs, but are not necessarily a small holdings authority.

Rural district councils possess approximately the same powers to acquire land as have non-county boroughs and urban district councils, with the differences that a rural council is not a highway authority and does not itself provide public libraries, museums, art galleries, allotments, aerodromes, and housing redevelopment.

The purchasing powers of parish councils are confined, but include the provision of public libraries, museums, art galleries, recreation grounds, public walks, rights of way, open spaces, burial grounds, allotments, car parks, offices, mortuaries, public baths, wash houses, and playing fields. It is, perhaps, significant that Parliament has not given parish councils any further power to acquire land since 1937, apart from the Parish Councils Act, 1957.

In relatively rare cases, a statute may permit all classes of local authorities (including parish councils) to acquire land for a particular purpose: *see* the Open Spaces Act, 1906, ss. 125 and 127 of the Local Government Act, 1933, and the Physical Training and Recreation Act, 1937. Some Acts—the Town and Country Planning Act, 1947, and the National Parks, etc., Act, 1949—enable the Minister of Housing and Local Government in certain circumstances to decide which local authority is the appropriate body to acquire land.

The powers listed above are not exhaustive and indicate only those functions involving possible powers of purchase. In mentioning local authorities account should also be taken of the powers of combined police and fire authorities and of joint boards constituted by local authorities to administer such matters as sewage disposal, cemeteries, crematoria, planning, water supply, etc.

Acquisitions lacking compulsory powers

A number of statutes limit the power of acquiring land to purchases by agreement and compulsory powers are not available. These powers are summarized in the following table:

Purpose (1)	*Statute* (2)	*Acquiring authority where power is limited to purchase by agreement* (3)
Explosives magazine	Explosives Act, 1875, s. 72	Council of a county, county borough or certain boroughs and urban districts
Justices' rooms, Sessions houses, Assize court house	Municipal Corporations Act, 1882, s. 105	Municipal borough
Technical and Industrial Institution	Technical and Industrial Institutions Act, 1892	Local authority being the governing body of an institution
Public library, museum and art gallery	Public Libraries Acts, 1892-1919	Council of a county district or parish
Suburban common	Local Government Act, 1894, s. 26 (2), Commons Act, 1876, s. 8	Council of a borough or urban or rural district
Right of way over land	Local Government Act, 1894, s. 8 (1) (*g*)	Parish council
Common regulated by a Scheme	Commons Act, 1899, s. 7	Council of a county borough or district
Open space and burial ground	Open Spaces Act, 1906	Any local authority
Ancient monument	Ancient Monuments, etc., Act, 1913, s. 1	Council of a county or borough
Existing ferry	Ferries (Acquisition by Local Authorities) Act, 1919	Council of a county, county borough or county district
Land in neighbourhood of road required for preserving amenities	Restriction of Ribbon Development Act, 1935, s. 13 (2)	Any highway authority
Existing sewage works	Public Health Act, 1936, s. 15	Council of a county borough or district
Gymnasium, playing field, holiday camp, camping site or club centre	Physical Training and Recreation Act, 1937	Parish council
Existing market	Food and Drugs Act, 1955, s. 49	Council of a county borough or district

Purchases requiring prior consent

Sometimes, the consent, sanction, or authorization of the appropriate Minister is required before a local authority can acquire land by agreement, but since consents of this nature will cease to be necessary once cl. 18 of the Town and Country Planning Bill (now before Parliament) passes into law, there is no point in giving examples. The only exception to cl. 18 will arise where land is to be purchased in advance of a local authority's immediate requirements and lies outside the area of the authority.

As distinct from ministerial consent to the purchase of land by agreement, the licence or approval of a government department is occasionally essential before a particular project or scheme can proceed. Thus, the licence of the Secretary of State is needed for an explosives magazine; he certifies crematoria, and approves remand homes, approved schools, children's homes and hostels, and special reception centres. Again, the exercise of some functions, which may entail the purchase of land (as in the cases already quoted), must be in accordance

with a plan or scheme prepared by a local authority and approved by the appropriate Minister, *e.g.*, planning and the provision of schools and welfare services, etc. In particular, the consent of the Minister of Transport and Civil Aviation is required for the establishment of an aerodrome.

So far as compulsory purchase is concerned, all compulsory purchase orders have to be confirmed by the Minister in question, with the rather odd exception contained in s. 33 (8) of the Public Health Act, 1925, whereby a local authority may acquire land not occupied by buildings lying between an improvement line and the street boundary; such land may be compulsorily acquired without reference to a Minister and the Acquisition of Land (Authorization Procedure) Act, 1946, is not applied. All compulsory purchase orders of local authorities must be made under the procedure laid down under the Act of 1946, except where made under the Light Railways Acts, 1896 and 1912, or part III of and schs. 3 and 4 to the Housing Act, 1957. A parish council does not of itself possess compulsory powers, but the county council may be authorized to make a compulsory purchase order on behalf of the parish council under s. 168 of the Local Government Act, 1933.

Finally, under this head, it may be remarked that the consent of the county council is required by s. 26 (2) of the Local Government Act, 1894, for a district council to exercise the powers of an urban sanitary authority in connexion with the acquisition of suburban commons by way of gift under s. 8 of the Commons Act, 1876.

Land outside the area of an acquiring authority

Restrictions are occasionally placed upon a local authority seeking to acquire land outside its area. The restriction may be absolute, as in the case of s. 49 of the Food and Drugs Act, 1955, where a market can only be provided inside the district of the local authority. A conditional restriction is imposed under the Ferries (Acquisition by Local Authorities) Act, 1919, where the ferry being purchased must be within the area of the acquiring authority, but may also be acquired provided that it serves the inhabitants of the area.

If a local authority desire to establish an undertaking outside its area, an opportunity is sometimes provided by statute to enable objections to be made to the proposal, particularly where it is for the provision of sewage works or a cemetery. Under s. 16 of the Public Health Act, 1936, a local authority proposing to establish a sewage disposal works outside its area must give public notice thereof, and the owners of land affected and the local authority in whose area the works are to be established may serve notice of objection on the acquiring authority. The Minister of Housing and Local Government may then approve the proposals with or without modification, after holding an inquiry. Section 16 is also applied where it is proposed to construct a cemetery or crematorium outside the area of the local authority (Public Health (Internments) Act, 1879, s. 2 (2); Cremation Act, 1902, s. 4).

Alternatively, the consent of the local authority within whose area an undertaking is intended to be provided by another local authority may be required. Consent is not to be unreasonably withheld and any question as to what is reasonable is determined by the appropriate Minister. For instance, the provision of a cold-air store, refrigerator, or slaughterhouse within the area of another local authority needs the consent of that authority (Food and Drugs Act, 1955, ss. 71, 80).

A local authority may not take steps under s. 116 of the Public Health Act, 1936, to supply water within any part of their area which is not already supplied by them and is within the limits of supply of a statutory water undertaking, without the consent of the undertakers. This provision is also applicable where local authorities acquire water rights for houses under s. 103 of the Housing Act, 1957. Where a small holdings authority wish to acquire land outside their area they are obliged to consult the county or county borough council concerned beforehand.

Miscellaneous conditions affecting powers of purchase

In special cases Parliament has imposed restrictions on the provision of an undertaking in relation to its proposed site.

The question of whether cemeteries should be established in a residential area is solved by s. 10 of the Cemeteries Clauses Act, 1847, which requires that a cemetery shall not be constructed within 100 *yds.* of a dwellinghouse without the consent of the owner or occupier. Crematoria receive similar attention under s. 5 of the Cremation Act, 1902, which provides that a crematorium shall not be constructed within 200 *yds.* of a dwellinghouse, save with the consent of the owner, lessee and occupier, nor within 50 *yds.* of a highway.

Where a local authority seek to acquire land for vehicular parking places under s. 68 of the Public Health Act, 1925, and s. 16 of the Restriction of Ribbon Development Act, 1935, they must give public notice of their intention to acquire or use the land. The local authority have to consider any objections received and notify their decision in writing to the objectors. Any person aggrieved by the decision may appeal to the magistrates' court.

Before a county borough or district council acquire insanitary premises under the Housing Act, 1957, the county court must first find that the house cannot be rendered fit for human habitation at reasonable expense. Where land, which is being purchased by a local authority under statutory powers, includes dwellings occupied by 30 or more persons, the local authority is required to provide housing accommodation for the persons displaced subject to the approval of the Minister of Housing and Local Government, unless the Minister decides that such accommodation is not necessary (Housing Act, 1957, ss. 49, 144, sch. 9). But this obligation does not apply in relation to acquisitions by local authorities under s. 38 of the Town and Country Planning Act, 1947.

A different type of restriction is met in s. 8 (1) (*g*) of the Local Government Act, 1894, under which a parish council may acquire by agreement rights of way provided that the acquisition is " beneficial to the inhabitants of the parish." The amount of land which can be purchased under s. 105 of the Municipal Corporations Act, 1882, for the purposes of justices' rooms, sessions houses, etc., must not exceed in the whole five acres. As an example of a condition subsequent to purchase, the title to land acquired for cottage holdings and smallholdings has to be registered.

Restrictions on compulsory acquisition

Limitations of a general nature are imposed under s. 1 of and part III of sch. 1 to the Acquisition of Land (Authorization Procedure) Act, 1946, in respect of the purchase of certain descriptions of land. Where a compulsory purchase order is made relating to the property of a local authority or land acquired by statutory undertakers for the purposes of the undertaking, it will be subject to special parliamentary procedure if the authority or undertakers object to the order. Again, if a compulsory purchase order authorizes the purchase of a common, open space, or fuel or field garden allotment, the order is subject to special parliamentary procedure unless the appropriate Minister is prepared to grant a certificate as prescribed by para. 11 of sch. 1 to the Act of 1946. A compulsory purchase order for the site of an ancient monument or other object of archaeological interest will also be subject to special

parliamentary procedure, unless the Minister of Works certifies that the acquiring authority have undertaken to observe appropriate conditions as to the use of the site.

Part only of a house, building, or manufactory, or of a park or garden belonging to a house, cannot be compulsorily acquired, in cases where the provisions of part I of sch. 2 to the Act of 1946 are applied, if the owner is in a position to sell the whole, unless the Lands Tribunal determine that the part of the house, building, or manufactory in question can be taken without material detriment to the house, etc., or that the part of the park or garden concerned can be taken without seriously affecting the amenity or convenience of the house.

Apart from the Act of 1946, various statutes place special restrictions on compulsory acquisition. Section 41 of the Allotments Act, 1908, forbids the acquisition of land forming part of any park, garden or pleasure ground, home farm attached to and usually occupied with a mansion house, or otherwise required for the amenity or convenience of any dwellinghouse, or which is woodland not wholly surrounded by or adjacent to municipal allotments. A similar provision is to be found in s. 13 (3) (*a*) of the Restriction of Ribbon Development Act, 1935.

A compulsory purchase order made in respect of insanitary premises cannot be confirmed if the owner or mortgagee undertakes to carry out the necessary works: Housing Act, 1957, s. 12. Under s. 41 of the Town and Country Planning Act, 1947, where a compulsory purchase order is made as regards a building of special architectural or historic interest, the owner may apply to the magistrates court for an order staying proceedings on the compulsory purchase order.

This concludes the analysis of the use of powers of purchase of local authorities grouped by reference to their statutory restrictions and limitations, but, additionally, there remain three further categories for consideration, two where the powers are not limited and can be expanded, and one where the tables can be turned against the acquiring authorities.

Omnibus and ancillary purposes

Land may be acquired under the Town and Country Planning Acts, 1947-1954, for almost any purpose, including those not recognized by other statutes. Section 38 (2) (*a*) of the Town and Country Planning Act, 1947, is available until development plans become operative, to enable land to be purchased for purposes for which local authorities could not be authorized to acquire land compulsorily under any other enactments, subject to satisfying the Minister of Housing and Local Government that the purpose is immediately necessary in the interests of the proper planning of the area.

In areas where development plans are in force, powers of compulsory purchase may be exercised under s. 37 (1) in respect of any of the statutory functions of local authorities and statutory undertakers, or under s. 38 (1) for development purposes, provided that in either case the land has been designated as subject to compulsory purchase under the development plan. The advantage of so designating land is that objections to the compulsory purchase of the land are considered and determined at the time when the development plan is approved by the Minister of Housing and Local Government. Land acquired under s. 38 (1) will normally be required in respect of areas of comprehensive development, but land may also be taken under this section to serve any use in accordance with the plan, which means that the use of such land is not necessarily restricted to a purpose authorized by statute.

Some Acts, whilst permitting the acquisition of land for a particular function, authorize the land or part to be used or developed for purposes incidental or ancillary to the main function. Under the Housing Act, 1957, shops, recreation grounds, and other buildings or land serving a beneficial purpose in connexion with the provision of housing accommodation, may be provided with the consent of the Minister of Housing and Local Government. Thus sites for churches, hotels, and industry have been included in connexion with housing estates, together with facilities for providing meals, refreshments, and laundry. Section 20 of the Civil Aviation Act, 1949, enables local authorities to carry on ancillary businesses on municipal aerodromes, and under s. 22 of the Coast Protection Act, 1949, land acquired under that Act may be used for specified incidental purposes.

Man bites dog

So far, the powers under consideration refer solely to local authorities wishing to acquire land. But recently the legislature, acting as "protectors of the public," have enacted provisions which enable a landowner to turn round, as it were, on a local authority and oblige it to acquire his land. For example it is possible, within the ambit of s. 19 of the Town and Country Planning Act, 1947 (which is to be amended by cl. 28 of the Town and Country Planning Bill), for an owner who is refused permission to develop his land to require the local authority to acquire the land compulsorily, by serving a purchase notice on the authority. Again, where the owner of a requisitioned house is able to show that he will suffer severe hardship if possession of his house is retained under the Requisitioned Houses and Housing (Amendment) Act, 1955, the Minister of Housing and Local Government is empowered, after consultation with the local authority concerned, to direct the authority to make an offer of purchase to the owner. Clause 31 of the Town and Country Planning Bill will enable resident owner-occupiers of dwellinghouses, who cannot sell their property except at a very reduced price because of a threat of compulsory acquisition under an approved development plan, local Act, or trunk road or special road order, to serve a notice requiring the appropriate authority to purchase the property.

In summary, it may be said that an appreciation of the powers of local authorities to acquire land viewed against the background of the statutes does not afford a simple classification, or serve to provide any clear-cut divisions, but instead gives a glimpse of a kalaidoscope of powers, fascinating at first sight but tending on closer examination to deteriorate into a monotonous recitation of functions.

A.S.W.

ADDITIONS TO COMMISSIONS

HAMPSHIRE

Peter McGeoch Corsar, 237 London Road, Waterlooville, nr. Portsmouth.

Vice-Admiral Sir John Wilson Cuthbert, K.B.E., C.B., Ibthorpe Manor Farm, Hurstbourne Tarrant, nr. Andover.

Mrs. Else Johanne Henn-Collins, Red Roofs, Blackfield, Fawley, nr. Southampton.

Mrs. Ruth Mabel Kinnear, Wickham House, Wickham, nr. Fareham.

William Herbert Moore, Gothlands, Moors Road, Colden Common, nr. Winchester.

Erik Francis Gerard Rhodes, Brambridge House, nr. Eastleigh.

Group Captain Patrick Henry Ridley Saunders, C.B.E., Chalk Croft Farm, Penton Mewsey, Andover.

MIDDLESEX COUNTY

John Terence Ledwith, 14 Beech Avenue, Acton, W.3.

SOMERSET COUNTY

Mrs. Pamela Hobhouse, Bottom Barn Farm, Hadspen, Castle Cary, Somerset.

Col. Percy Leslie Malins Wright, T.D., Roundhill, Wincanton, Somerset.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Parker, C.J., Donovan and Salmon, JJ.)

R. *v.* ARUNDEL JUSTICES. *Ex parte* JACKSON

April 29, 1958

Road Traffic—Careless driving—Sentence—Fine and disqualification—Disqualification beyond maximum period—Appeal—Power of court to quash order of disqualification only—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 12.

APPLICATION for order of *certiorari*.

The applicant, Martin Buxton Jackson, was convicted at Arundel magistrates' court of driving without due care and attention. He had no previous conviction. The justices fined him £20 and disqualified him from holding or obtaining a driving licence for 12 months, and the applicant obtained leave to apply for an order of *certiorari* to bring up and quash the order of the justices. The grounds of the application were that, as the applicant had no previous conviction, the maximum period of disqualification to which he was liable under s. 12 of the Act was one month, and, therefore, the justices had acted in excess of their jurisdiction.

Held: that though a fine and conviction were not severable, the disqualification was supplemental to the rest of the order of the justices and severable from it; and that, therefore, the Court would quash the order of disqualification only, leaving the fine to stand.

Counsel: *J. Raymond Phillips*, for the applicant; *Anthony Harmsworth*, for the prosecutor.

Solicitors: *Charlton Hubbard & Co.*, for *Malcolm, Wilson & Cobby*, Worthing; *T. C. Hayward*, Chichester.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* ROSE. *Ex parte* McGIBBON

April 16, 1959

Husband and Wife—Maintenance—Order made in Jamaica—Rescission—Application in England for summons to rescind—Maintenance Orders (Facilities for Enforcement) Act, 1920 (10 *and* 11 *Geo.* 5, *c.* 33) *s.* 1 (1), *s.* 4.

APPLICATION for order of *mandamus*.

On January 23, 1957, a maintenance order was made in Jamaica against the applicant, McGibbon, on the ground that he had deserted his wife and wilfully refused to maintain her. The applicant was then in England, his wife being in Jamaica. On February 11, 1958, the applicant's wife came to England at the request of the applicant who had sent her part of the expenses for the journey. She resumed cohabitation with the applicant in Brixton for about a month and during that period a child was conceived. The applicant applied at Lambeth magistrates' court, where the order of the Jamaican court had been duly registered, for a summons to rescind the order made in Jamaica. The magistrate held that he was bound by *Pilcher* v. *Pilcher*, (1955), 119 J.P. 458, to hold that no such summons as was sought could be issued under the Maintenance Orders (Facilities for Enforcement) Act, 1920, and refused to issue the order. The appellant obtained leave to apply for an order of *mandamus* directing the magistrates to issue the summons.

Held: that an application to rescind a provisional order made in some part of Her Majesty's Dominions could be made under s. 4 (6) of the Act following the appropriate procedure, but that s. 1 (1) contemplated only a summons to enforce an order, and not an application to issue a summons for rescission; the magistrate was right in holding that he was bound by *Pilcher* v. *Pilcher*, *supra*, to refuse to issue the summons; and the appeal must be dismissed.

Counsel: *Rountree*, for the applicant. The respondent did not appear.

Solicitors: *E. A. Mathew*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

KAHN *v.* NEWBERRY

April 14, 1959

Shops—Closing—Place where any retail trade or business is carried on—Costermonger's barrow—Shops Acts, 1950 (14 *Geo.* 6, *c.* 28), *s.* 2 (1), *s.* 12.

CASE STATED by London sessions appeal committee.

An information was preferred at Westminster magistrates' court by the respondent Newberry, a duly authorized officer of the London county council, charging the appellant, Frederick Kahn, a costermonger, with trading in contravention of s. 12 of the Shops Act, 1950. The magistrate convicted the appellant. He appealed to the county of London quarter sessions who found that between 10 and 11 o'clock on the night of May 6, 1958, the appellant was standing beside a stationary costermonger's barrow on a pitch in Great Windmill Street, W.1, and sold apples to two customers. They dismissed the appeal and affirmed the conviction. The appellant appealed to the Divisional Court.

Section 2 (1) of the Shops Act, 1950, provides: "Every shop shall be closed for the serving of customers . . . (*b*) [during the summer months] not later than nine o'clock in the evening on the late day and eight o'clock . . . on any other day of the week." By s. 12: "It shall not be lawful . . . to carry on in any place not being a shop retail trade or business of any class at any time when it would be unlawful . . . to keep a shop open . . ."

Held: following *Stone* v. *Boreham*, (1958), 122 J.P. 418, that the Acts seemed to contemplate shops in the ordinary sense of the word and also places with sufficient permanence to warrant their being treated as a shop; there was no distinction between the mobile van in *Stone* v. *Boreham*, *supra*, and the barrow in the present case; and the same tests applied to weekday as to Sunday trading. The appeal, therefore, must be allowed and the conviction quashed, but the question whether a barrow with a fixed station in practice or by licence would come within the relevant sections was expressly left open.

Counsel: *Wrightson*, for the respondent. The appellant appeared in person.

Solicitors: *Sharpe, Pritchard & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

CATER *v.* ESSEX COUNTY COUNCIL

April 14, 1959

Town and Country Planning—Enforcement notice—Allegation that development had been carried out without grant of permission—Caravan site—Effect of regulation giving permission for use for 28 days—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51) ss. 23, 24—*Town and Country Planning General Development Order and Development Charge Applications Regulations*, 1950 (*S.I.* 1950, *No.* 728), *sch.* 1, *para.* 2.

CASE STATED by Romford justices.

An information was preferred at Romford magistrates' court by the respondents, the Essex county council, charging the appellant, John Cater, with an offence under s. 24 of the Town and Country Planning Act, 1947, in that on April 14, 1958, he had used certain land at Cummings Hall Farm, Bear Lane, Romford, for a caravan site, in contravention of an enforcement notice under s. 23, dated December 12, 1956. The notice stated that "development consisting of a material change of use has been carried out on the land . . . without the grant of permission required in that behalf under part III of the Act, the said land being used for the purpose of a caravan site."

The appellant was the owner of six acres of land which prior to 1954 were used as a smallholding. In 1954 he allowed caravans to park on the land and by January, 1955, the number had increased to 90. Planning permission was refused by the county council. The appellant appealed, a local inquiry was held, and the Minister of Housing and Local Government dismissed the appeal. On December 12, 1956, the council served an enforcement notice on the appellant requiring him within three calendar months to discontinue the use of the land and restore it to its former condition. By a letter sent at the same time the county council informed him that they would not prosecute him if he took steps to have the caravans removed progressively over the next three years. In March, 1958, the council were not satisfied that the appellant was complying with that offer—indeed it appeared that there were over 100 caravans on the site—and they said that, if the caravans were not reduced to 56 by April 12, 1958, they would prosecute. The appellant having taken no steps to reduce the number of caravans, a prosecution was instituted. Under the Town and Country Planning General Development Order and Development Charge Applications Regulations, 1950, sch. 1, para. (2), permission was given in class IV for the use of land for temporary buildings and use for any purpose for not more than 28 days in any year. The justices convicted the appellant, who appealed.

Held: following *Francis* v. *Yiewsley and West Drayton U.D.C.*, (1957), 122 J.P. 31, that, on a literal reading of s. 23 (1) of the Act, in any case where the regulations of 1950 applied there had been a grant of the permission required in that part of the Act, and, therefore, the recital in the notice in the present case was not accurate, the notice was a nullity, and the appeal must be allowed.

Counsel: *Megarry, Q.C.*, and *R. Higgins*, for the appellant; *Lawton Q.C.*, and *Marriage*, for the respondent.

Solicitors: *James and Charles Dodd;* Solicitor, County Hall, Chelmsford.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PRACTICE NOTE

CONSECUTIVE SENTENCES

At the sitting of the Court of Criminal Appeal (Lord Parker, C.J., Donovan and Salmon, JJ.) on April 13, 1959, the following statement was made by Lord Parker, C.J.:

"The attention of the court has been drawn to a difficulty which sometimes arises when a sentence is expressed to begin 'at the expiration of the term of imprisonment you are now serving,' or words to the same effect. If, as sometimes happens, the prisoner is already subject to two or more consecutive terms of imprisonment the effect of such a formula is that the new sentence will begin at the expiration of the term he is *then* serving which may be the first of two consecutive terms. This will often not be the intention of the court giving the new sentence. It is suggested that the simplest course would be to use some such formula as 'consecutive to the total period of imprisonment to which you are already subject.' The only exception to the use of such a formula would be if the intention was that the new sentence should be concurrent with one of the previous sentences. It has been arranged that prison governors should in appropriate cases add to the list of previous convictions supplied to the court a footnote indicating that the prisoner is already subject to consecutive sentences and giving details of them."

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

CORRIGENDUM

The decision of the court in *North* v. *Gerrish* (*ante* p. 284) should have been reported as follows: "*Held*: that the section created only one offence, and that, if a person stopped, but did not give his name and address, or if he did not stop, but subsequently gave his name and address, the full requirements of the section had not been fulfilled, and, therefore, the case must be remitted to the justices with the direction that the offence was proved."

THE WEEK IN PARLIAMENT

By J. W. Murray, Our Lobby Correspondent

Although the Street Offences Bill received a Second Reading by 46 to 11 votes in the House of Lords, it came under attack from all parts of the House.

Lord Silkin said that his own view was that we must at all costs drive the "traffic" from the streets and the Bill was necessary for that purpose. But there were a large number of detailed objections to the Bill, and a substantial number of amendments would have to be put forward.

Lord Rea said that it seemed to him that in dealing with the women and not tackling the men, who provided the demand, they were going the wrong way about dealing with the problem. Any legislation to mitigate the evil should be directed, it not first, at least equally towards the customer who really caused the whole situation to exist.

The Lord Bishop of Exeter welcomed the general intention of the Bill but had some detailed criticism. He said that they viewed with apprehension and alarm the entry of prostitutes into prisons and the possibility of corrupting the other female prisoners. He did not agree with Lord Rea that the demand created the supply. He thought that an excessively advertised supply tended to create an increased demand, and they believed that if prostitutes were not so easily seen, the demand would rapidly begin to fall.

They felt extremely doubtful about the definition of the offence in cl. 1 because it created a new criminal offence of "soliciting for immoral purposes." They would prefer that the offence should quite clearly be soliciting in such a way as to cause offence. They disliked the use of the phrase "common prostitute" because it would create an inevitable bias in the mind of the magistrate. Also, they thought the clause as drafted gave far too great powers to the police.

The Earl of Arran said he found it hard to think of a prostitute as a criminal, however she peddled her wares. This was punitive legislation and all punitive legislation ran the risk of aggravating the very condition which it set out to correct. He believed prostitutes would continue to ply their trade, but more furtively than flamboyantly.

Lord Denning urged amendment of the first clause. He said that the man as well as the woman should be prosecuted. "When you have the offence of bribery, it is not only the person who offers the bribe who is guilty: so also is the person who accepts it. When you have the offence of receiving stolen property, it is not only the thieves who are prosecuted. If there were no receivers, there would be no thieves. If a man is ready to degrade himself by going to bed with a common prostitute, if he accepts knowingly the invitation which she publicly and blatantly offers, why should he not equally be brought before the magistrate? I do not say that there should be imprisonment, or penalties of that kind; or that he should be fined. Do your Lordships not think that, if the man also were summoned beside the woman with whom he had spent his time, that might act as a great deterrent to these offences? Eliminating the element of annoyance, and making simply successful solicitation, or unsuccessful solicitation, an offence, changes the character of it altogether."

Lord Saltoun said he would be glad if some humane and decent plan were put into practice to clear the streets, but he was perfectly certain that the Bill would not do so. He thought that it was a monstrous mistake to deal only with women and not with men. If the Bill did become law, he suggested that women police should be used because they were not open to the same inducements as men.

For the Government, Lord Chesham said that there was a wide divergence of opinion about what was the most effective and fairest way of dealing with the problem which the Bill sought to tackle. It was obvious that a scandalous state of affairs existed and that it was very necessary to take some sort of action to deal with it. It was not the object of the Bill to tackle the moral question of prostitution, to make it illegal, or to provide a cure for it. Its object was to deal with the self-evident nuisance created by the manner in which prostitutes plied their trade in the streets, and to do it in such a way that the law would be capable of effective enforcement to abolish the nuisance. At the same time, the opportunity had been taken to make it more difficult for prostitutes to congregate in certain all-night cafés and places of that kind, where they created a nuisance; and to provide increased penalties for those who exploited or controlled prostitutes.

He said there was nothing new about cautioning prostitutes before they had been charged with loitering or soliciting. It had been the practice in London for 70 years, although up to now it had only been one caution. The Government thought that the system would be made more effective and more likely to divert young girls from the dangers they were drifting into, by giving two cautions instead of one and by linking the cautions with a definite attempt to bring redemptive influence to bear.

The nuisance the Bill was aimed at was created by the prostitute when they were plying their trade in the streets, and not by the customers. It was necessary to identify the woman who as a habit or way of life offered herself in the street. The continued use of the well-understood term "common prostitute," which had been in use for something like 135 years, was the best way of doing it. To his way of thinking, there was no substance in the view that a prostitute would not get a fair deal in the court because of the use of that expression.

It had been said that she would come into court with a label tied round her neck, and that having had that label tied round her neck, she would not get a fair trial on the question whether she was actually soliciting or not. But when that woman came into court she would be no more "labelled" a common prostitute than anyone who was charged with any other offence was labelled. Two things would be alleged; that she was a common prostitute and that on a particular occasion she had been loitering or soliciting for the purpose of prostitution. The police would have to prove both those points, and the statement that a woman was a common prostitute was nothing more than an allegation, exactly the same as alleging that a man who had stolen something was a thief. It was not the label that would be taken into consideration; it was the evidence of her behaviour that would have to be adduced on the alleged occasion. The words "common prostitute" on the charge sheet would mean only that the police thought that they could prove that she was a common prostitute in the same way that any other statement on a charge sheet had to be proved.

Lord Chesham went on to say that the fear had been expressed on several occasions that the effect of the Bill would be to drive prostitution underground, and would cause other evils to arise. It might be that something like that would happen. Since they could not abolish prostitution effectively, those prostitutes who wished to continue with their trade would have to find other ways of geting into touch with their customers and that might lead, as had been suggested, to various alternative practices. It was the Government's opinion that those activities could be regarded as being not so objectionable as the blatant parade of prostitutes which took place in our streets. People had used the phrase "sweeping the dirt under the carpet" in connexion with the Bill. But dirt under the carpet was at least not so dangerous or so noticeable as dirt all over the room.

REVIEWS

Green's Death Duties. Supplement to Fourth Edition. By D. J. Lawday and E. J. Mann. London: Butterworth & Co. (Publishers) Ltd. Price 7s. 6d. net.

The only new statute from which extracts have had to be printed in this supplement is the Finance Act, 1958, but there are several new decided cases, dealing for the most part with technical points of interpretation. The provisions of the Act of 1958 relating to estate duty are very complex, and raise questions which have not yet been before the courts. They will be found duly noted in part I of the supplement and set out in part II. Part I is a noter-up for the main work in the usual form, and covers 33 pages. Both the authors are members of the staff of the Estate Duty Office and, although the work is not an official publication, it can no doubt be relied upon as giving the view taken by the Board of Inland Revenue upon the proper application of the statutory provisions.

Living the Law. By Frank E. Cooper. Indianapolis: The Bobbs-Merrill Company, Inc. Price 7·50 dollars.

This is an interesting and novel work. A foreword by Judge Thomas McAllister, of the United States Court of Appeals of the Sixth Circuit, sets it in its place among previous works upon the human side of the lawyer's art, and truly says that it is a book which can be read as much for enjoyment as for knowledge. It should appeal also to the non-legal reader.

The learned author, who is a member of the bar and professor of law in the University of Michigan, sets out, essentially, to show how the decision of a case may turn upon the way in which it is presented. This is not in defence, still less in praise, of casuistry in a pejorative sense, but is an honest statement of something which in the twentieth century is more often overlooked than in the fourteenth. For every decision it is necessary to ascertain the facts and to discover their relation to the law. For this purpose careful presentation and honest arrangement of the facts is all important. Incidentally, a chapter which we found all too short discusses the difference between the process of reaching a decision by a government department or similar administrative agency, and the process of reaching it by forensic methods. The book ends with a short chapter upon the drafting of legal documents.

Although the learned author naturally takes his illustrations from the courts of his own country, most of the cases he analyses might equally have occurred in England. It is a book to stimulate thought, which can be recommended to the English lawyer (in particular), and almost equally strongly to the layman who takes a philosophical interest in ascertaining the truth.

Dynamic Accounting. By Eugen Schmalenbach. Translated from the German by G. W. Murphy and Kenneth S. Most. London: Gee & Company. Price 42s. net.

In the first place a short explanation seems needed of the title of this work. The author's idea is that at the present day a business man does not look to his accounts primarily to show him the state of his capital. He knows this without needing to examine accounts in detail every year. What he wants to know from his accountants is the way his business is going: that is to say, whether he is trading at a loss or at a profit, and thus to use his accounts as a means of watching the day to day operations of his business. The author, indeed, was among the pioneers of the modern system of accounting, and articles by him in financial newspapers in Germany had their share in detaching the art of the accountant from older ideas. To the reader who is not an accountant the earlier portion of the book, which explains the history of accountancy from the early sixteenth century onwards, is particularly attractive. One does not ordinarily think of the familiar phrase a "profit and loss account," in relation to the enterprise of Magellan in sailing round the world. The author suggests at one point that the very phrase "profit and loss account," which may have puzzled some people at the present day, can be traced to these early merchant venturers. Having said so much for the benefit of the reader who is not an accountant, it is right to point out that the German author, and equally his translators and publishers in this country, are not concerned primarily with history or with such things as may interest the general reader, but have set out to supply a textbook for students upon the principles to be observed in business accountancy, and at the same time a work which can be usefully referred to by practising accountants and by business men, who desire to understand the way in which accountants go about their work.

Messrs. Gee and Company, who have to their credit a number of business books, are to be congratulated on making this one available to English readers and, so far as we can judge of the accountancy side (which, after all, is not one of our own special interests), we think it would be well worth obtaining by senior officials of local authorities.

Young's Taxation Appeals. Second Edition. By H. G. S. Plunkett. London: Solicitors' Law Stationary Society Ltd. Price 15s. net.

This is another of the small books in the series called *Oyez Practice Notes*, dealing in a hundred pages or so with matters of practical importance. Like Mr. Young, the author of the first edition, the present editor is a member of the bar and former member of the staff of the Inland Revenue, coming to this task with specialized knowledge, although (as he is careful to point out in the preface) without authority to commit the Commissioners to his interpretation of statutory provisions. In his preface to the first edition Mr. Donovan, as he then was, remarked that the law relating to appeals on the subject of income tax was a good deal more simple and straightforward than the taxing statutes themselves and, in particular, was refreshingly free from formality. There were however possibilities of appeal to different bodies, sometimes at the taxpayer's option, and it was necessary to have these at one's fingers' ends if one was to do justice to one's own or client's case. Since that time, the law relating to appeals has been a good deal altered, in particular by the Act of 1952, and the practice has been altered by the application to tax appeals of the principles laid down by the Committee on Tribunals. This has involved complete revision, and in its present shape the book is sure of a welcome and a good spell of useful life.

Alban and Lamb's Income Tax As Affecting Local Authorities. Fifth Edition. By G. H. Forster and J. D. R. Jones. London: Charles Knight & Co., Ltd. Price 55s. net.

Local authorities are taxpayers as well as recipients of rate money and other forms of income. The schedules which affect them most are sch. A, imposing property tax, and sch. D, imposing income tax upon earnings from their trading undertakings and from the other sources which give them a regular income. The history of sch. D taxation of local authority revenue-earning undertakings is long and curious. Older readers will remember the gradual and rather painful steps, assisted by several local Acts, in the direction of ensuring that a local authority might set off losses in one trading account against gains in another. By two Acts of 1945 this process was regularized and made more or less universal, and thereafter a series of rules for giving effect to the provisions of those Acts and to the judicial decisions on which they were founded was agreed, between the Inland Revenue and the Institute of Municipal Treasurers and Accountants. The Institute has done invaluable work towards assisting local authorities, and incidentally assisting the Revenue itself, by ensuring uniformity of treatment and clarity in the application of the law. All this is set out in the historical portion of the book but the principal purpose of a book of this sort is to serve practical ends in day to day administration, and this the present editors, drawing on the long experience of their predecessors in earlier editions, have admirably done. The book is divided into chapters corresponding to the five schedules of income tax, and sub-divided with particular reference to sch. D taxation, so as to show how the present method has come about and how it is applied to a number of individual undertakings. The nationalization of gas and electricity has brought about some simplification, but there still remain a number of trading undertakings which have to be separately considered, even though the effect of the statutes since the war has been to provide (substantially) similar treatment for all. The subject of this book is one which needs to be mastered by all senior officials of the finance departments of local authorities, and also by their legal advisers. It is, we suppose, to these that the work is primarily directed, but it should also be valuable to chairmen and members of finance committees. It can be commended to them without reservation, for there is nothing in it which cannot be understood by any educated person, and this notwithstanding the great technicality of some parts of the subject matter.

Limitation of Actions. By Michael Franks. London: Sweet & Maxwell, Ltd. Price £3 3s. net.

This is not a large book, but the publishers justly observe on the dust-cover that acquaintance with the complicated law relating to the limitation of actions may save your case. It will be convenient to every practitioner, to have a book at hand in which the whole of the law of limitation is collected, without his having to search here and there to find how the statute of 1939 has been applied to particular topics. We speak of the application of the statute of 1939, because the Limitation Act, 1939, consolidates the greater part, though not the whole, of what had gone before. It was also a consolidation with amendments and (from some points of view) not altogether a happy exercise in the art of marrying these two things. There might have been some advantage from the point of view of practical working, as well as from that of technical draftsmanship, if the machinery had then been available which became available after the war, for making without a Bill in Parliament adjustments in existing statutes in preparation for consolidation, or alternatively if the Government had been advised to embody, in a short amending Act, all the alterations which it was desired to make, and then to have a pure consolidation. The Act of 1939 is a scholarly example of the draftsman's art, but because of the way in which it was produced its alterations of the previous law do not always stand out as alterations. The result is that the practitioner is sometimes uncertain whether the law was really altered in such a way that the innumerable earlier decisions upon limitation of actions are inapplicable. Apart from this fundamental flaw in the Act, due to failure by the Government of the day, and particularly by the Law Officers, to think out the best way of doing what was needed (a failure which was not the draftsman's fault) the Act of 1939 brings into a narrow compass most aspects of the law of limitation. The present work devotes the first 40 pages to an analysis of the Act itself, and in the remaining parts of the book proceeds to discuss the rules of limitation in all contexts. These contexts are arranged alphabetically from accounts to torts. This mode of treatment involves some repetition, but will be convenient in practice. Having thus worked through the law under alphabetical headings, the learned author sets out the extensions and exceptions arising from fraud, mistake, and disability, and thereafter discusses the rules of equity as they apply by analogy to the statute of 1939 or otherwise have the effect of a limitation of action. Finally, and not least important for the practitioner, there are short sections on pleading and practice. The Act of 1939, with the few amending provisions, is set out *in extenso*. Altogether this is a useful book well worth its price. Having from time to time been critical of failure, in publications by this distinguished firm, to provide a full apparatus of reference for cases, we are glad to be able on this occasion to congratulate them on a table of cases which gives all the references which can be required either in practice or in teaching.

The Constitution and Powers of Parish Councils and Parish Meetings. By Charles Arnold-Baker. London: The National Association of Parish Councils. Price 2s. net.

This book comprises only 38 pages apart from its index, but it is informative and will be very useful to those for whom it is intended. Mr. Arnold-Baker has for many years been associated with the Commons, Footpaths, and Open Spaces Preservation Society, and more recently with the National Association of Parish Councils as its secretary. Needless to say, he is thoroughly informed on all matters relating to parish councils, and he has the knack of compressing an account of their powers and those of parish meetings into clear and readable paragraphs. The law about parish councils can be found in larger works, some of them devoted specially to parish law and some comprising the law of local government in general; for all that, there is room for a little book of this sort in a pocket size which tells the clerk and the member of a parish council everything that he needs to know for practical purposes about the council's powers. At the modest price of 2*s*. the book might advantageously be obtained not merely by every parish council but by every parish councillor as well.

Criminal Case and Comment, 1958. Edited by J. C. Smith, M.A., LL.B., Barrister-at-Law. Professor of Law University of Nottingham. London: Sweet and Maxwell, Ltd. Price 17s. 6d.

This is a useful collection of criminal cases decided in 1958. The subjects are arranged alphabetically, and there are cross references as well as an index. After a statement of the facts and the decision of the court a commentary compares the decision with other relevant authorities and briefly states the principles involved. In addition to the references to the various law reports there are also references to text books and articles bearing on the points for decision. Some cases decided at quarter sessions are included. We recommend the work especially to students, but it will also be of value to practitioners.

The Great Tide. By Hilda Grieve. Essex: County Council of Essex, County Hall, Chelmsford. Price 30s. net.

The sub-title of this book is *The Story of the* 1953 *Flood Disaster in Essex*. It has been produced by the county council, and the editor is a senior member of their archives staff. Although the preface properly reminds the reader that other parts of England met comparable misfortunes in 1953, and that coastal lands in Holland suffered even more severely, the story of Essex is particularly instructive. In every chapter there are touches of human interest, and everywhere the evidence of good work done by professional and amateur helpers in mitigating the effects of the disaster when it came. Particularly illuminating by way of a lesson against complacency for other areas are the introductory chapters, showing how the sea has constantly invaded Essex and how constantly, until our own time, misfortunes have turned into disasters of at least local application through want of forethought and want of co-operation. Each chapter is illustrated with photographs or maps or both, and there are several Meteorological Office charts showing how the combination of storms and tides brought about the worst phase.

Our chief doubt about the book is as to where it will find readers. There is much that will be of interest to persons not connected with the county, but there is some danger that it may contain too much information to become really popular. This will be a pity, for the narrative portion makes excellent reading and the statistical and documentary portions contain much that is worthy of study in almost any part of the country—not merely in connexion with the prevention of floods, but as an essay in the need for preparation, and in what can be done by English people by way of improvization when something occurs which could not be foreseen. The price of 30*s*. is modest for the value contained in the book, and it will be a handsome addition to the shelves of any reader. We commend the council's enterprise, and we hope that sales will be enough to prevent loss to the ratepayers of Essex from publication of the book.

GRETCHEN AT HOME

Popular fallacies and misleading generalizations are often, nowadays, part of the stock-in-trade of those whose task it is to make didactic pronouncements, for the guidance of the uninformed masses, in certain newspapers, from the forum of some world or national assembly, and on radio and television networks. The tendency is no doubt a survival from the lively propaganda which was put about, in all countries, to keep up *morale*, and to diminish alarm and despondency, during the Second World War. To the acute observer it sometimes appears that, the more frequent and widespread the dissemination of information, the more inaccurate it grows. Speakers and writers either have not the time or will not take the trouble to verify their references.

Take, for example, the tendentious suggestion (so often heard) that the German Nation has been a single unity throughout its history, bound by common ties of language, racial affinity and social institutions, and is only now being compelled by the exigencies of the " Cold War " to perpetuate an " unnatural " division between west and east. As every student of history knows, this is a fable. There are certainly ties of language, but so there are between Bavaria and Austria, between the Rhineland, Alsace and Lorraine, between Baden and Northern Switzerland. As for racial affinity, it may be doubted whether there is more in common between a Württemberger and an East Prussian than between a Hungarian and a Pole.

In regard to political unity, most people know that, for the best part of a thousand years, the history of Central Europe is the story of a large number of warring States, each with a King, a Duke or an Elector at its head, from Westphalia in the west to Pomerania in the east, and from Mecklenburg in the north to Austria in the south and Bohemia (detached in 1919) in the south-east. A great part of that period is occupied with the efforts of the Kingdom of Prussia to break the power of the Austro-Hungarian Empire. At the Congress of Vienna, following the Napoleonic Wars, there were great accretions to the territory of Austria (including a great part of Northern Italy), Russia (including the whole of Poland except Galicia), and Prussia (including Westphalia, the Rhineland and Swedish Upper Pomerania). The 39 " German " States formed a loose Federal Union, though each State retained its independence in foreign affairs. The rise of Prussia, in the latter half of the nineteenth century, led to its absorption of Danish Schleswig-Holstein, the reincorporation in " German " territory of Alsace-Lorraine, the supplanting, first of Austria and subsequently of France, as a great continental power, and the establishment of the German Empire under Bismarck in 1871. Germany, as one united nation, was only 74 years old at the close of the Second World War.

The Roman historian, Publius Cornelius Tacitus, wrote a well-known essay *On the Origin and Geography of Germany* in 98 A.D. In his time Rome's two German Provinces were both situated on the *west* bank of the Rhine; in the time of Augustus, 70 years before, the legions had defeated the warlike tribes to the east, and advanced almost to the Elbe—roughly where the boundary now runs between the Western and Eastern Occupation Zones. But in 9 A.D. Quintilius Varus, with three legions, was ambushed and destroyed in the Teutoberger Wald, near Osnabrück, and the Elbe as a frontier ceased to be anything but an imperialist dream. It was as much as Rome could do, thereafter, to hold the outposts of the Rhine.

Tacitus tells us of the physical characteristics of the people—their " wild blue eyes, reddish hair and huge frames." They take little pleasure in the ownership and use of precious metals. But

> "Armies wavering on the point of collapse have been restored by the women. They plead heroically with their men, thrusting their bosoms before them and forcing them to realize the imminent prospect of their enslavement—a fate which they fear more desperately for their women than for themselves . . . They believe that there resides in women a power of holiness and prophecy, and so they do not scorn to ask their advice, or lightly disregard their replies."

Then comes the passage which is probably the best known in the entire work, if only by reason of its contrast with conditions in contemporary Rome:

> " Marriage in Germany is austere, and there is no feature in their morality that deserves higher praise. They are almost unique among barbarians in being satisfied with one wife each . . . The German women live in a chastity that is impregnable, uncorrupted by the temptations of public shows or the excitements of banquets. Adultery in that populous nation is rare in the extreme. Neither beauty, youth nor wealth can find the sinner a husband. No one in Germany finds vice amusing, or calls it ' up-to-date ' to debauch and be debauched. The hopes and prayers of a wife are settled once and for all. They take one husband; no thought or desire must stray beyond him. They must love not him so much as the married state. Good morality is more effective in Germany than good laws in some places that we know."

Now the correspondent of *The Times* in Bonn has quoted recent figures to show that," while 92 *per cent.* of West Germany's married men believe their home lives to be happy, only 19 *per cent.* of married women feel the same." This descrepancy, it is suggested, is not a purely German phenomenon; but it seems that it is larger than the European and American average. For one thing, the revolution in the social position of women, which has been gradual in most other countries, has had to be faster in Germany, " because of the long artificial gap of the Nazi period, when women were tied to their children, church and kitchen." And, despite the rational acceptance of women in industry, " a married woman returning from work in the evening may have to forget 20 years of social progress as she enters the house." This notwithstanding the establishment of equal pay, and the right of a wife, on divorce, to 50 *per cent.* of the communal property accumulated since the date of the marriage. (The divorce rate, by the way, has fallen from 19 to 8·1 per 10,000 in the past 10 years.)

Why, then, the dissatisfaction on the wives' part? " The evidence of the opinion poll suggests that the main complaint is of a lack of understanding. The men expend all their energies and capacities in their work, and have no time for their homes." Prosperity has come too fast for social conditions to adapt themselves in time.

This is a strange state of things in a country with so strong a romantic tradition, summed up in the phrase of its greatest poet, Johann Wolfgang von Goethe—*Das ewig Weibliche zieht uns hinan*—" the eternal feminine beckons us ever upward." It is also an interesting development from the social characteristics that Tacitus describes.

A.L.P.

PERSONALIA

APPOINTMENTS

Mr. Joseph Ingram has been appointed whole-time clerk to the justices for the county borough of Smethwick and commences his duites on June 1, next. Mr. Ingram is at present the deputy clerk to the justices for the petty sessional divisions of Cannock and Rugeley, Staffs. He was admitted in November 1956 and has had 25 years' experience in magisterial work. He was awarded the Justices' Clerk's Society prize by the Law Society in 1956. He is 43 years of age. He succeeds Mr. Thomas Craddock in his new position. Mr. Thomas Craddock retires on May 31, next. He was for 30 years assistant and deputy clerk to the Halesowen justices and was appointed deputy clerk to the Smethwick justices in 1945. In 1950 Mr. Craddock was appointed clerk to the Smethwick justices. He was a founder member of the National Association of Justices' Clerk's Assistants and was a national counsellor of that Association.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Contract—*Nominated sub-contractors—Direct payment on default by main contractor.*

The council entered into a contract with a company for the laying of water mains. The form of contract used was that approved and recommended by the Institution of Civil Engineers, the Association of Consulting Engineers, and the Federation of Civil Engineering Contractors (fourth edn.). A firm of suppliers was nominated by the council and the goods have been supplied. The contractors have called a meeting of creditors who decided to re-consider the position in three months time. In the meanwhile the contractors are proceeding with the contract, but the nominated suppliers or sub-contractors have, in accordance with the contract, requested payment of their account direct by the council.

Is it in order for the council to pay the account of the sub-contractors (less retention money) or could such a payment be regarded as a fraudulent preference? COMAR.

Answer.

In our opinion these payments by the council, in terms of cl. 59 of the contract, lack the essential elements of a fraudulent preference and cannot be attacked as such.

2.—Criminal Law—*Caravan—Brothel.*

Observations are about to be kept by police officers upon a caravan occupied by a woman. It is not known whether, in fact, the woman owns as well as occupies the caravan. She has been living in the caravan for some months on her own but frequently other women have gone into the caravan accompanied by a number of different men. The woman herself has been seen entering the caravan with different men. The police feel that the caravan is, in fact, being used as a brothel. The difficulty which arises is whether the caravan can be construed as a brothel within the law. A brothel is the same thing as a bawdy-house, and a common bawdy-house is defined in *Stephen's Digest of Criminal Law*, ninth edn., p. 187, as a house or room, or set of rooms, in any house kept for purposes of prostitution. *Singleton* v. *Ellison* (1895) 1 Q.B. 607 and *Winter* v. *Woolfe* (1931) 95 J.P. 20 appear to be authority for the proposition that a brothel is a place where people of opposite sexes are allowed to resort for illicit intercourse, whether the woman be a common prostitute or not. I am doubtful whether, strictly speaking, the caravan can be a brothel, for such authority as there is appears to indicate that a brothel must be a house or part of a house.

Section 36 of the Sexual Offences Act, 1956, makes reference to the term "premises" for the purposes of that section. Although a case of totally different character, *Stone* v. *Boreham* (1958) 122 J.P. 418; [1958] 2 All E.R. 715, might be some support to the belief that a caravan is not intended to be covered by the expression "premises." In that case it was held that a mobile shop was not a shop within the meaning of s. 74 of the Shops Act, 1950. That is the interpretation section and it states that "shop" includes any premises where any retail trade or business is carried on. There is a similarity between a caravan and a mobile shop, and in neither case would the word "premises" apply.

Bearing these matters in mind, your opinion would be appreciated on the question of whether or not a caravan can be a brothel. If you are aware of any authority on this matter I should be most grateful if you would quote same. M. AGIST.

Answer.

We see no difficulty in treating a caravan as a brothel in view of the decision in *Calvert* v. *Mayes* (1954) 118 J.P. 76; [1954] 1 All E.R. 41. Although the defendant in that case was charged with living wholly or partly on the immoral earnings of prostitution, part of the evidence was to the effect that he had allowed prostitutes to use his car for the purpose of intercourse with various men, and it is implied in the judgments that the car was regarded as a brothel. We do not think that any narrow interpretation of "premises" would be a defence to a charge of using the caravan as a brothel.

3.—Criminal Law—*Causing or permitting—Byelaw—Deposit of materials on highways*

A county byelaw provides that no person shall drive any vehicle or cause or permit any vehicle to be driven on to a highway unless there has been removed from the wheels and all underside parts thereof as completely as is reasonably practicable all mud, clay, or similar material adhering thereto, which is likely if not so removed to fall therefrom so as to injure or be likely to injure the highway, or create or to be likely to create a nuisance to persons or traffic using the highway. An employee is seen to drive a tractor from a field on to the highway without removing mud from the wheels. The employer was not present when this was done. Do you consider that in these circumstances the employer can be convicted of permitting the vehicle to be driven on to the highway in contravention of the byelaw, or do you consider, having regard to *James & Son, Ltd.* v. *Smee* (1954) 118 J.P. 536; [1954] 3 All E.R. 273, that he is entitled to be acquitted?

Would the employer's position be affected if he could prove he had given instructions to employees to remove all mud, etc., from vehicles before driving them on to the highway? DESTUR.

Answer.

The case cited was heard by a specially constituted Divisional Court at the same time as *Green* v. *Burnett*; opposite conclusions were reached and the two decisions, each reversing the magistrates, should be considered together. The effect is that an employer does not cause or permit, within the meaning of the Motor Vehicles (Construction and Use) Regulations, 1951, unless he or some person for whose actions he is responsible (not being the actual offender) knows that the illegal use is taking place. The second part of the query does not arise upon "permitting." He could, however, under those Regulations, have been charged with using the defective vehicle, though he was not present, and his ignorance of the defect would have been no defence: *see* also *Gifford* v. *Whittaker* (1942) 106 J.P. 128; [1942] 1 All E.R. 604, that the driver also can be charged with using, though ignorant of the defect. In the enactment now before us, however, the first verb is not "use," but "drive," and the employer cannot be charged with driving. Nor can he, in our opinion, safely be charged with permitting.

4.—Evidence—*Joint offence by A and B—A's confession implicates B—B in cross-examination suggests a police witness is lying and threatens perjury proceedings—B gives evidence—Cross-examination as to his bad character and use of A's statement in cross-examination.*

A and B are charged with house-breaking. A has made a full confession admitting his guilt and stating that B was with him and assisted him in committing the offence. During the preliminary hearing B's advocate suggested that one of the prosecution's witnesses (a police officer) was lying. B threatened the witness with perjury proceedings. B chose to give evidence on his own behalf.

(*a*) Is the suggestion that the witness for the prosecution was lying and a threat of perjury proceedings, a sufficient imputation within s. 1 (*f*) of the Criminal Evidence Act, 1898, to justify cross-examination of B to the effect that he is of bad character.

(*b*) Can A's statement implicating B be put to B in cross-examination at the preliminary hearing. ITAROC.

Answer.

(*a*) We think, on the authority of *R.* v. *Clark* [1955] 3 All E.R. 29, that B's cross-examination of the witness coupled with the threat of perjury proceedings involves an imputation on the character of that witness, so as to justify cross-examination of B as to his character. But *see R.* v. *Cook* [1959] 2 All E.R. 97, about the exercise by the Judge of his discretion to allow such cross-examination; and the propriety of warning the defence that it may be going too far.

(*b*) No.

5.—Licensing—*Registered club—Whether permissible to fix larger subscription for such members as require to use the bar.*

An athletic club at which rugby, cricket, and tennis are played has recently become a registered club under the Licensing Act, 1953, with a portion of the main club-room fitted as a bar where intoxicating liquors are served. The management committee have ruled that any members requiring to use the bar must pay an additional fee over and above the normal membership subscription, otherwise bar facilities are denied them. Is this permissible?

I feel that membership of the club automatically entitles a person to purchase intoxicating liquor from the bar premises without any extra payment. O. CLAUDIUS.

Answer.

The Licensing Act, 1953, s. 143 (2) (*e*) (ii) requires that the terms of subscription and entrance fee shall be shown on the return furnished to the clerk to the justices by the secretary of the club. What the rate of subscription shall be is fixed by the rules of the club entirely as a domestic matter. Nothing in the law prohibits the fixing of differential subscriptions by reference to the extent of availability of the club's amenities to the classes of members who pay such subscriptions. Therefore, the scheme outlined by our correspondent contains nothing that is unlawful.

6.—Local Government—*Chairman of the council—Ex-officio justice of the peace—Section* 33 (5), *Local Government Act,* 1933.

A certain member of my council is likely to be nominated for election as chairman of the council for the ensuing local government year. I am informed that he was removed some years ago from the office of magistrate, which he then held by appointment to a permanent commission of the peace, following his conviction for an offence. Section 33 (5) of the Local Government Act, 1933, is mandatory in its terms that the chairman shall, by virtue of his office, be a justice of the peace for the county, that he shall take the oaths required, etc., unless he is already a justice of the peace. It is understood unofficially that, once removed from a permanent commission of the peace, a magistrate is not reinstated.

This could, therefore, give rise to a difficult situation should the council at the annual meeting proceed to elect the person concerned, since it appears that the mandatory terms of s. 33 (5) could not be complied with, unless any distinction can be drawn between *ex-officio* office and permanent office.

The council will, of course, be advised of the embarrassing situation which would arise if such an election takes place, but I should be grateful for your observations. D. NIMROD.

Answer.

An *ex-officio* justice does not need to be appointed to the commission. The Act itself makes him a justice, and entitles him to take the oaths required by law, without having taken which he cannot act. This is, however, qualified by s. 4 of the Justices of the Peace Act, 1906, which enables the Lord Chancellor to exclude an *ex-officio* justice from exercising his functions. If this were to be done, an unpleasant situation would arise, and the council may think it wise not to run the risk.

7.—Local Government Act, 1933, s. 76—*Solicitor as councillor—Client's relations with council.*

A member of this firm is a local councillor and from time to time the affairs of our clients come before the council. Is the partner concerned precluded:

(*a*) From speaking on matters concerning our clients.

(*b*) From voting on such matters.

(*c*) From remaining in the chambers while such matters are under discussion; and is his interest in any way declarable?

ETOMA.

Answer.

We take it that the language of the query is wider than its intention. The solicitor acting for a builder in divorce proceedings, for example, could not be said to have an interest in the builder's relationship with the council, or to be required by s. 76 of the Local Government Act, 1933, to declare that he is so acting. On the other hand, if the solicitor has negotiated a contract for the builder to buy land for development, conditionally on his securing development permission, the solicitor has an interest in the application for permission, and the answer is yes to all parts of the query. (As regards (*c*) we assume that there are standing orders. The obligation to withdraw is not in the section). Between these extremes, the questions can only be answered upon the facts of each case, but with a strong leaning to caution wherever the particular transaction by the client can involve legal work of the sort which in the regular course the solicitor would do for him: *see R.* v. *Hendon U.D.C., ex parte Chorley,* (1933) 97 J.P. 210.

8.—Magistrates—*Membership of sub-committee of local authority—Bias.*

When cases of irregular school attendance come before the court, I sometimes have difficulty in getting a quorum of justices because they are either members of the education committee or members of the council, the council being the divisional education committee. One of the members of the council has pointed out that there is a school attendance prosecution sub-committee and the wording of their authority is as follows:

"The following powers and duties are delegated to the school attendance prosecution sub-committee with full authority to act in relation thereto.

"The making of school attendance orders and the enforcement of the provisions of the Education Act, 1944, and Education (Miscellaneous Provisions) Act, 1953, or any other Act or order relating to the compulsory attendance of pupils at schools, including the powers and duties conferred or imposed by ss. 37, 38, 39 and 40 of the Education Act, 1944."

The minutes of the sub-committee are reported to the education committee although they cannot be amended by that committee, and the minutes of the education committee are embodied in the minutes of the council.

I have taken the view that members of the education committee and of the council should not sit on school attendance cases. It has now been suggested that the only people who are debarred from sitting on school attendance cases are the members of the school attendance prosecution sub-committee. Please let me have your views thereon. E.D.C.

Answer.

We agree with your opinion. The sub-committee is not an independent entity, even though the council and the main committee have entrusted their powers to it.

9.—Magistrates—*Practice and procedure—Laying information—Information signed by X but put before magistrate by Y—X as the informant?*

Police inspector X signs an information and hands it to police constable Y who takes it to Z, a justice of the peace, together with a form of summons. Z then signs the information as having been laid before him and issues the summons. The defendant, by his solicitor, appears in court in answer to the said summons and immediately takes objection to the summons on the grounds that it was improperly issued, in that inspector X had not in fact laid his information before the magistrate Z. Is there any merit in such an objection or was the summons properly issued? There is no question of the defendant's having appeared in answer to the summons and so waiving any irregularity. M. WORRIED AGAIN.

Answer.

Foster v. *Fyfe* (1896) 60 J.P. 423 is relevant in this matter and we think that it follows from this that had the information shown that Y was laying information on behalf of X this would have brought it within r. 4 (2) of the Magistrates' Courts Rules, 1952; but we know of no authority for X's information being handed in by Y without X ever appearing before the magistrate who issues the summons. It may be that informations are sometimes "laid" in this irregular fashion and that there is little merit in the objection, but we think that the practice does not comply with r. 4 (2), *supra*, and that in such a case the summons is not properly issued.

10.—Public Health Act, 1936—*Building byelaws—Contravening work passed by council's inspector.*

The following is an extract from the council's building byelaws: "A floor shall be deemed to satisfy the requirements of this byelaw if:

"(*a*) being a solid floor, the floor itself (or its finish) is impervious to moisture, or there is inserted within the thickness of the floor a damp proof layer;"

In a new bungalow recently erected in the area the floors of the bungalow were constructed of a layer of hardcore covered in concrete on top of which were placed in part of the bungalow wood blocks stuck down with a bituminous substance, and the remainder with rubber tiles, also stuck down with a damp proof adhesive. At the various times of inspection by the council's building inspector he was satisfied that the work had been carried out in the manner laid down in the byelaws, and in due course a certificate was issued by the council to the effect that the dwelling had been constructed in accordance with the building byelaws.

A short time after the house was occupied the owner complained that the wood block and rubber tiled floors had risen in many places owing to the damp and water seeping up through the concrete base. It seems clear that the cause of this was that the adhesive used for sticking down the wood blocks and rubber tiles, which should have formed the damp proof layer (referred to in the building byelaws) being within the thickness of the floor and a damp proof layer, was not properly applied.

I shall be glad to have your opinion as to whether:

(*a*) The local authority are liable in any way for this defect in workmanship because the work was inspected at intervals, and was certified as complying with the building byelaws?

(*b*) As there was inserted within the thickness of the floor a damp proof layer there is in fact any contravention of the council's building byelaws? DONIB.

Answer.

(*a*) Issue of this certificate is an undesirable practice capable of producing misunderstanding amongst other persons, as well as of their own position, but it does not expose the council to legal liability.

(*b*) As we understand the construction, the bituminous rubber adhesives may not have formed a "layer" as contemplated by the byelaw, even if properly laid. In fact, they were not "damp proof," so there was a contravention.

11.—Public Health Act, 1936—*Sewers—Public highway—Compensation.*

The rural council have recently laid a public sewer in a section of the public highway between villages A and B during which it was necessary to close the road to all vehicular traffic for a short time, and the county council accordingly made an order under s. 47 of the Road Traffic Act, 1930 (as extended by the Public Utilities Street Works Act, 1950). The owner of a coach who conveys children (under private arrangements) between their homes at A and a school at B was obliged, during the operation of the road closures order, to make a detour of several miles in the conveyance of children between A and B. The coach owner now claims compensation for the additional expenses incurred by him by reason of the extra mileage. It may be assumed that the council have not been unreasonable or negligent in the performance of their duty. Do you consider that the council are liable under s. 278 of the Public Health Act, 1936, in these circumstances? PARNAS.

Answer.

The laying of the sewer has caused such an obstruction that the county council found it advisable to exercise their powers to close the road. Such an obstruction would, but for the statutory authorization of the works, have given rise to a cause of action: *see Rose* v. *Miles* (1815) 4 M. & S. 101; *Greasley* v. *Colding* (1824) 2 Bing. 263; *Hart* v. *Basset* (1681) T. Jones 156; *Iveson* v. *Moore* (1698) 1 Ld. Raymond 486, and compensation is therefore payable under s. 278 of the Public Health Act, 1936, since what was done followed from the work: *cp. Lingke* v. *Christchurch Corporation* (1912) 76 J.P. 433.

12.—Recreation Ground—*Children's playground—Use by other persons.*

A person has left the sum of £3,000 in trust for the parish of S for the purpose of purchasing land for a children's playing field or recreation ground in the parish, and laying out and equipping the same, with power to invest any portion of the residue which they may think necessary to produce sufficient income to maintain and manage such playing field and recreation ground. The parish council propose to purchase land and provide football pitches, cricket pitches, tennis courts, and a pavilion, also swings, etc. They desire to know (i) do their proposals comply with the terms of the bequest; (ii) must they prohibit adults and persons over 16 years of age from using or going on the "fields"; (iii) can they let youth clubs, boy scouts, and similar youth organizations use the "fields"; (iv) generally on the matter. ALANA.

Answer.

(i) We think so.

(ii) Without going so far as to say "must" we think this would be wise. Something may depend on local circumstances, but it has often been found that young men playing football, etc., do interfere with the use of a children's playground.

(iii) The same objection would not apply to use of the ground by organized and disciplined bodies of young people, even if some of their members were no longer children.

(iv) We are assuming that the ground will be fenced for the protection of the cricket pitches, tennis courts, and swings, but a problem of enforcement arises since the council are hardly likely to be able to employ a whole-time groundsman. If they exhibit notices, saying that the ground is not available for persons over 16 except when such persons have charge of young children, this is probably as much as they can do.

13.—Road Traffic Acts—*Car "garaged" on highway—Need for insurance policy?*

A defendant has been summoned on the information of a police inspector for that he did use on a road a motor car without having in force in relation to the user of the vehicle such a policy of insurance or security in respect of third party risks, as complies with the requirements of part 2 of the Road Traffic Act, 1930, contrary to s. 35 of the Road Traffic Act, 1930.

The following facts were proved or admitted:

1. The road in question is a road within the meaning of the Act.
2. The defendant was the owner of the car at the time.
3. There was no policy of insurance in respect of the vehicle at the time.
4. The vehicle had been in the particular road for a week and that the defendant had left it there to show it to any person who might wish to buy it.

There was no physical user of the car, and the question that arises is whether there was, in fact, a user of the vehicle within the meaning of s. 35 of the Road Traffic Act, 1930.

"User" in its ordinary connotation suggests employment of a thing or the application of a thing to a purpose, for example, using a hammer, using a brush, or indeed, using a car.

The reported cases on the question of "user" that I have been able to find all reveal some physical use, although in *Andrews* v. *H. E. Kershaw, Ltd. and Anor.* (1951) 115 J.P. 568; [1951] 2 All E.R. 676, Hilbery, J., states, "I think it is impossible to say, that a vehicle is not in use on a road within the meaning of s. 3 of the Act of 1930 when it is stationary for the purpose of loading or unloading. It obviously is." Section 3 relates to construction of motor vehicles and in my opinion the observations of the learned judge have no relationship to "user" under s. 35 of the Act.

I should welcome your opinion as to whether the facts in this case reveal a "user" to support a conviction in this case against s. 35 of the Road Traffic Act, 1930, and perhaps you will also be good enough to refer me to any reported decisions (if any) which touch this point. ISANO.

Answer.

We answered rather similar questions at 119 J.P.N. 774, P.P. 14 and 121 J.P.N. 371, P.P. 10. We have very much in mind that the purpose of s. 35 is to ensure adequate compensation to third parties, who may be injured because of the "use" of a vehicle on a road. A stationary vehicle can be one of the causes of an accident and it is intended, in our view, that s. 35 should apply to such a vehicle. We think, therefore, that in this context the word "use" must be given a wide meaning and that the defendant in the case in question is using the vehicle within the meaning of s. 35.

We do not know of any authority on this point.